

Conducting a FOIA Self Audit for Due Date Extensions

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July 15, 2021

Why self audit - what are the benefits?

- ▶ Ensure that extended due dates are *defensible in appeals or litigation*
 - ▶ Saves time and money by reducing instances of administrative appeals and litigation
- ▶ *Support data reporting of the backlog* by using full statutory flexibility
 - ▶ Provides an opportunity to decrease your program's backlog numbers
 - ▶ Allows EPA to use the statute provisions to the full extent available during our annual reporting to DOJ and OMB

We are employing the self audit processes established last year

- ▶ The most efficient process - each program review,
 - ▶ all *open requests*
 - ▶ with *extended due dates* and,
 - ▶ confirm that each request's FOIAonline record includes supporting documentation
- ▶ Provide Joan Moubleaux with certification

How to self-audit, step-by-step

- ▶ Review each request with a *due date more than 20 working days after the perfected date.*
- ▶ *Ensure that initial correspondence was sent within the initial 20 working days, and any subsequent extension needs to be given before the prior extension expires.*
- ▶ *Confirm that each case file includes correspondence to requester confirming due date extension(s).*

Reasons for Extending Request Due Dates

- ▶ *Fee assurance*
- ▶ *Request clarification* - providing the requester an opportunity to negotiate scope or to extend the due date
- ▶ *Due Date Negotiated* with requester
- ▶ *Unusual Circumstances* properly invoked, with estimate of completion date provided to the requester

Let's take a closer look at each scenario

*Here's what to look for in each
FOIA request with extended due dates*

Fees and Fee Assurance Documentation

- ▶ A fee negotiation can occur as many times as needed
- ▶ **What does confirmation look like in FOIAonline?**
 - ▶ Communications to the requester
 - ▶ Requester's replies
 - ▶ There may be several communications before you reach a resolution

Clarification Documentation

- ▶ Clarification can occur only once
- ▶ **What does confirmation look like in FOIAonline?**
 - ▶ Communication to requester
 - ▶ Requester's reply clarifying the request by changing the scope or agreeing to an extended due date
 - ▶ Communication to requester confirming agreed clarification

Date Negotiated with Requester

Documentation

- ▶ Negotiations can occur as many times as needed
- ▶ **What does confirmation of a negotiated due date look like in FOIAonline?**
 - ▶ Communications to requester
 - ▶ Requester replies
 - ▶ There may be several communications before you reach agreement
 - ▶ You may negotiate to extend the due date at any time and more than once while the FOIA is open

Unusual Circumstances Documentation

- ▶ **What does assertion of unusual circumstances look like in FOIAonline?**
 - ▶ Communication to requester stating unusual circumstances and providing estimated completion date. *40 C.F.R. § 2.104(e)*
 - ▶ Reasons for invoking Unusual Circumstances
 - ▶ Voluminous records
 - ▶ Collecting records from multiple locations within the Agency
 - ▶ Records contain other agencies' interests requiring their consultation

Unusual Circumstances, 40 CFR 2.104 (e)

► Regulatory Requirements under § 2.104

1. Notify the requester in writing, as soon as practicable,
 - a) of the unusual circumstances; and,
 - b) of the date by which processing of the request should be completed.
2. Give the requester:
 - a) an opportunity to limit the scope of the request,
 - b) modify the request,
 - c) or agree to an alternative time-period for processing.
3. Provide contact information for the FOIA Public Liaison; and,
4. Notify the requester of their right to seek dispute resolution services from the Office of Government Information Services (OGIS).

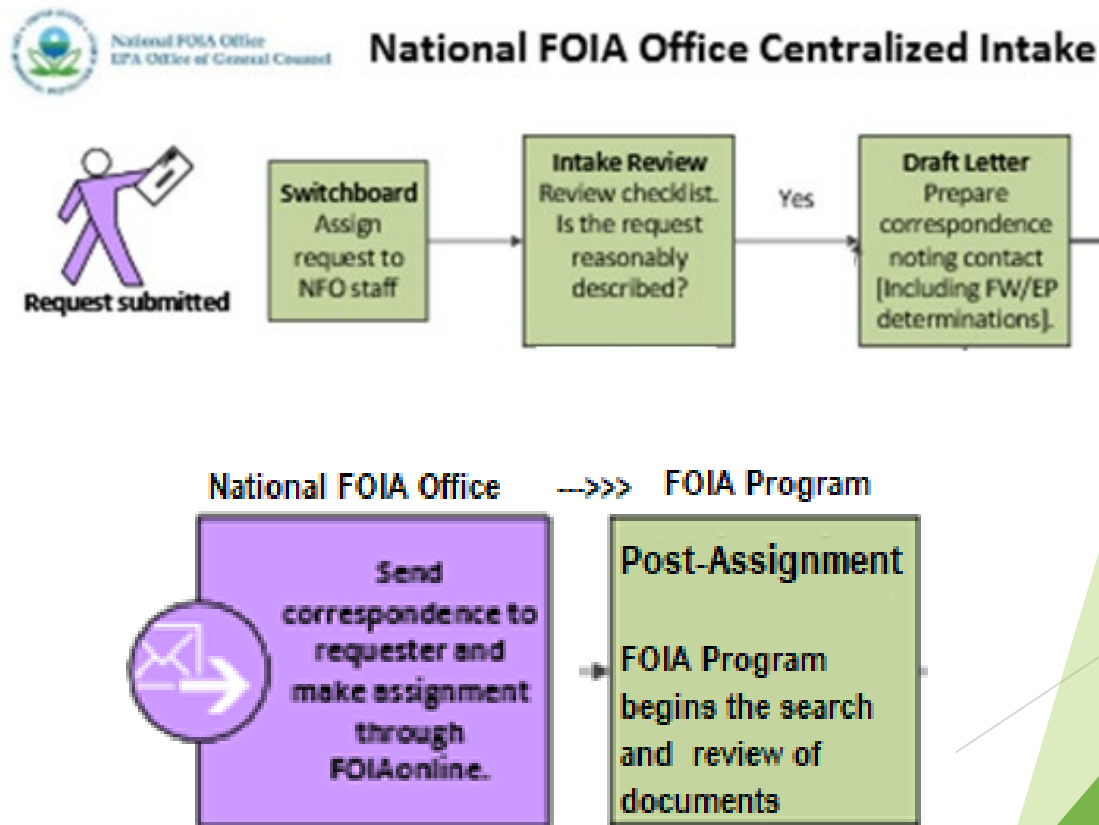
Why assert Unusual Circumstances?

Asserting that unusual circumstances exist gives the Agency more time to process the request. This is important in relation to:

- ▶ Preserving the ability to charge fees. 5 U.S.C. § 552 (a)(4)(A)(viii)
- ▶ The FOIA backlog
- ▶ Good customer service
- ▶ Avoid potential FOIA lawsuits
 - ▶ Requesters may seek judicial relief in district court if you fail to meet the statutory time frame for response. 5 U.S.C. §552(a)(6)(C)(i).
 - ▶ FOIA litigation is labor intensive and expensive
 - ▶ Attorney fees and costs come out of EPA office budgets

When does the agency invoke unusual circumstances (UC)?

1. During Intake: The agency reviews requests for unusual circumstances during the intake process
2. After Intake: FOIA Programs receiving a perfected and assigned request may also invoke unusual circumstances under certain circumstances.



Need Even More Time?

You have the automatic 10 day extension BUT you can extend the response time BEYOND 30 working days upon notice to the requester in writing:

- ▶ Unusual circumstances that apply to the request;
- ▶ Agency response requires more than 10 additional working days to complete;
- ▶ Provide an opportunity to limit the scope so that it may be processed within 30 working days or an opportunity to arrange an alternative time frame for processing the request or modified request;
- ▶ Provide the estimated date by which processing of the request should be completed
- ▶ Provide contact information for the FOIA Public Liaison to assist in the resolution of any disputes between the requester and agency; and
- ▶ Provide notice of the requester's right to seek dispute resolution services from OGIC and OGIS' contact information

How Do I Do This?

- ▶ Go to the NFO SharePoint Site
- ▶ Open [Due Date Extensions Including Unusual Circumstances](#)
- ▶ OR Find the template letters in the toolkit.

Extending the Due Date

To extend the due date, an agency user must enter the information in FOIAonline under Actions > Extend Due Date.

Case File Details

Actions

Make Assignment

Estimate Costs

Extend Due Date

Upload Responsive Records

Interim Release

Begin Close Out Process

Create New

Other

Requester Information

Due Date Extensions

Estimated CompletionRequester ApprovedRequester Approval Date

No due date extensions have been created.

Copy to ClipboardExport to CSV

Extend the Due Date

★ Is Extension due to Unusual Circumstances?

Yes

★ Estimated Date of Completion ?

Estimated Date of Completion is required.

★ Extension Justification

0/256

Extend Due DateCancel

Requester Info Available to the Public ⓘ

Yes ▼

Request Track

Simple ▼

Fee Category

Commercial ▼

Fee Waiver Requested No ✎

Fee Waiver Status

Expedited Processing Requested No ✎

Expedited Processing Status

Request Type

FOIA ▼

Request Perfected ⓘ

Yes ▼

★ Perfected Date

11/19/2019

Acknowledgement Sent Date

Unusual Circumstances ⓘ

Yes

Extension Justification

Given the current holiday season, it took a great deal of time to research the records requested due to many staff being on vacation.

Litigation

No ▼

While it is good to provide details about resource issues, etc. one of the statutory reasons must also be cited.

Questions and Guidance

PLEASE Use our template letters!

Please send comments and questions to moumbleaux.joan@epa.gov